



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, PSF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order that the landlord provide services or facilities required by the tenancy agreement or law. to cancel the one month Notice to End Tenancy dated ?
- b. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order that parking stalls 74 and 75 are reserved for the tenants as part of the services provided in their tenancy agreement?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenants previously rented another unit in the rental property and a commercial lease to operate their business. The commercial lease had parking stalls for units 74 and 75 assigned to the tenants use.

The tenants changed rental units. On November 28, 2014 the agent for the landlord and the tenants signed a lease for the subject premises. It provided that the term was a one year fixed term that started on January 1, 2015, ends on December 31, 2015 and become month to month after that. The rent was \$1395 per month. There is a notation indicating the security deposit was transferred from the previous rental unit.

The tenancy provided by the tenants indicates on page 1 that parking fees are included in the rent and at paragraph 44 it states NO SMOKING and parking #74 and 75. The tenant testified the previous building manager filled this in and signed the tenancy agreement.

At the time this agreement was signed the tenants also had a commercial lease with the landlord for the operation of a martial arts studio. That lease provided that the tenants had the use of the two parking stalls as part of that lease. The tenant testified the rental property is in a difficult part of town and they were concerned of the financial wellbeing of the martial arts studio. As a result they asked and were given the parking stalls to be transferred to their residential tenancy agreement.

The martial arts studio moved from that location on October 31, 2015 and the commercial lease was terminated. The tenants continued to use the two parking stalls from the end of November 2015 to May 2016 without objection from the landlord.

The management of the building was transferred to a third party who subsequently transferred it to the present landlord. The form of tenancy agreement that was passed to the present landlord from the previous management company(s) did not include the provision that parking fee was included in the rent and that the tenants had parking #74 and 75.

The landlord produced a document called the Master Rental Schedule. It does not indicate the parking stalls were transferred to the rental unit. Rather, it indicates they were part of the commercial lease with the martial arts studio.

The tenant has also produced the following:

- A statement signed by SK stating he witnessed the then Building Manager orally promise the parking stalls to the tenants on a number of occasions and was there when the lease was signed.
- A statement by JS that he overheard the building manager promise to give the tenants the parking stalls (as a safety measure as the tenants helped the building manager deal with dangerous and unruly individuals who might be harassing the building manager) at the time the tenancy agreement was signed.

- A statement from Mr. C that he witnessed the tenants talking to a representative of the landlord about the parking stalls being part of the lease.

Analysis

This is a difficult case. It involves credibility and whether the tenants' copy of the lease is to take precedent over the copy in the landlord records. After carefully considering the disputed evidence I determined that the tenants' copy of the tenancy agreement is to govern for the following reasons.

- I accept the testimony of the tenant that the previous manager agreed to transfer the two parking stalls to the tenants' residential tenancy lease. His testimony was candid and was not evasive.
- The Agent for the landlord had an opportunity to cross examine him. His testimony did not become evasive on cross examination and offered a reasonable explanation as to the differences in writing on the tenancy agreement..
- The representatives of the landlord who appeared at the hearing were not employed by the building management company who rented the rental unit. Further they were not present when this tenancy agreement was entered into and could not give first hand testimony as to the agreement..
- If there was a dispute as to the tenancy agreement the landlord would have the best opportunity to locate and get evidence from the previous manager who was present and signed the tenancy agreement. This did not happen.
- The tenant provided letters from 3 witnesses all of which indicated that at the time the tenancy agreement was signed (this took place in the martial arts studio) they overheard the tenants expressing concerns about the transfer of the parking stalls to their residential tenancy agreement.
- The explanation of the tenant for the transfer (concern about the financial viability of the business at that location and problems relating to street people) is reasonable.

Conclusion

As a result I ordered that the landlord make available to the Tenants for their exclusive use parking stall 74 and 75 or some other similarly situated parking stall as part of the rent paid for that unit.

The tenants have been successful with their application. I further ordered that the landlord pay to the tenants the sum of \$100 for the cost of the filing fee such some may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: July 20, 2016

Residential Tenancy Branch